



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: : Examiner:
PETER N. GLYNOS : Ramon O. Ramirez
Serial No. 10/057,208 : Group Art Unit: 3632
Filing Date: January 25, 2002 : Attorney Docket No:
Title: PROTECTIVE TARP WITH : PNG-101A
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APPEAL BRIEF

This brief is being filed in response to the Final Rejection of April 11, 2003 in the above-referenced case.

I. REAL PARTY IN INTEREST

The inventor of the instant patent application is Peter N. Glynos, who is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals and no related interferences.

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III. STATUS OF CLAIMS

The following is a list of all claims that have been resented in this application throughout its history and the status of these claims:

<u>Claims</u>	<u>Status</u>
1-20	Originally filed, now cancelled.
21-40	Pending, these are the appealed claims.

IV. STATUS OF AMENDMENTS

No amendment has been filed after the Final Rejection.

V. SUMMARY OF THE INVENTION

In conjunction with this section, Figure 5 is attached hereto as Exhibit B, and is referred to in the numbering of the elements. The present invention protective tarp 150 has side edges 163 and 167, a back edge 161 and a cut view front edge 165. There are a plurality of central areas shown here as central areas 151, 153, 157 and 159. Along the side edges 163 and 167 are a plurality of tank compartment anchor symmetrically arranged. These are typified by the tank compartment anchors 179, 181, 183 and 187 along the side edge 167. The back edge 161 has two tank compartment anchors 171 and 173, as shown. Between each central area are multiple sets of pairs of tank compartment anchors, each of these sets of pairs being grouped equidistantly from one another so as to defined the central areas shown.

The tarp 150 may be made in a continuous roll form and may be cut at any point to create a tarp of any desire length. It is preferred to cut the tarp 150 at locations between the pairs of tank compartment anchors that separate the various central areas. For example, cuts could be made between tank compartment anchors 191 and 193 to the left, and 195 and 187 to the right. Similarly, a very long tarp could be created by making a cut after tank compartment anchors 211 and 213.

VI. ISSUES

The basic issue is as follows:

- (a) Are claims 21 through 40 obvious under 35 U.S.C. §103(a) over Myers (6,363,661)? Would one of ordinary skill in the art take the device of Myers and make the anchors from the same material as the sheet material, locate the anchors in various places, and have the anchor compartments separate from each other?

VII. GROUPING OF CLAIMS

In this appeal, claims 21, 22, 24, 25, 21, 32, 34 and 35 are directed to a tarp that has separate anchors which are filled with water to anchor the trap in place over a mass.

Claims 23 and 33 are directed to the anchor material being the same as the sheet material.

Claims 26 through 30, and 36 through 40 are directed to the location of the anchors.

The above three groupings are recommended by the Applicant for purposes of appeal.

VIII. ARGUMENTS

(A.) Myers Rejection

Claims 21-40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Myers (6,363,661). The Examiner stated that Myers shows a flexible cover to protect items from weather elements comprising a sheet and anchors 20 to be filled with a weight as water to anchor the cover. He stated that the material from which the anchor elements are made from is not disclosed by the Myers patent. However, he concluded, to make them of the same material as that of the cover is considered to be an obvious matter of engineering choice with no patentable significance. Examiner Ramirez also stated that the location of the anchors is also considered to be an obvious matter of engineering choice or expediency again having no patentable significance. He further stated that to make the anchor compartments not linked together is considered an obvious matter of engineering choice to reduce cost. The Examiner concluded that it has been accepted to eliminate a member together with its function.

(B.) Claims 21 and 31

In response, the Applicant respectfully submits that the Myers disclosure does not present a prima facie case of obviousness. More specifically, with regard to claims 21 and 31, the feature of compartment anchors being separate and apart from each other does not present a prima facie case of obviousness for the following reasons. First, the Myers disclosure is different from the present invention. Second, if the spaced bladders of Myers were not interconnected, a function of filling all bladders simultaneously or filling a series of bladders simultaneously would be eliminated. Third, the present invention has opposite purposes and results from the Myers invention. And fourth, there is no motivation to eliminate the interconnections among bladders in the Myers disclosure.

First, the Myers disclosure is different from the present invention. Myers discloses a protected cover that utilizes spaced bladders that are filled and drained through inlet conduits. Myers' bladders are connected to next adjacent bladders with a flexible conduit 34 so that liquid flows down hill from one bladder to the next. This enables the liquid to essentially seek its own level by shifting to bladders located lower than others and enables all the bladders to be filled with a single connection. Although each bladder may be filled individually, the liquid flows down hill into successive bladders when one bladder is filled. The Applicant respectfully disagrees with the Examiner determination that Myers' bladders are separated and apart from each other, since the flexible conduits allow for connection of one bladder to next adjacent bladders. Webster's Ninth New Collegiate Dictionary defines separate as "set or keep apart,

detached". By the definition, Myers bladders would not be separated or apart from each other because each bladder is attached to adjacent bladders through the inlet conduits.

In contrast to this, the present invention anchors are separate and apart from each other, as specifically recited in claims 21 and 31. Each anchor is detached from any other anchor and may be separately filled with liquid. Thus, the Applicant respectfully submits that the Myers disclosure is different from the present invention.

Second, if the spaced bladders of Myers were not interconnected, a function of filling all bladders simultaneously or filling a series of bladders simultaneously would be eliminated. The Myers patent states that an object of the invention "is to provide a cover, in which the plurality of bladders are connected for fluid flow such that multiple bladders may be filled from a single water source." col. 2, lines 6 –9. If the elimination of the conduits were effected, the explicit object of the Myers invention providing for simultaneous filling of all bladders would be eliminated.

Third, the present invention has opposite purposes and results from the Myers invention. The difficulty with the Myers device is that water will flow down hill and ballast may be removed by gravity from higher areas where ballast may be desired. Additionally, the preferred embodiments of Myers seem to have a low level or down hill inlets that would require liquid ballast to be forced up hill. Finally, with the Myers device, selective ballast removal from individual bladders to achieve irregular anchoring (e.g. over an odd shaped object) would not be possible.

On the other hand, the present invention is not only different from the Myers teachings, but is also directed to opposite purpose and results. In the present invention,

the devices have separate individual anchor compartments. These are not interconnected and, as stated on page 9 and 10 of the original specification, separate small tank compartment anchors are referred in the present invention for a number of reasons.

Among these reasons are:

- (1) The ability to empty one or more compartments to satisfy anchoring requirements for specific applications;
- (2) The need to prevent massive fluid weight shifts when the tarp is being moved;
- (3) The ability to flatten out, fold, or shorten the functional length of the tarp; and,
- (4) Containment and minimization.

Thus, the present invention has opposite purposes from the Myers disclosure.

And fourth, there is no motivation to eliminate the interconnections among bladders in the Myers disclosure. In determining motivation, Myers must show a suggestion, a teaching, or a need to make the bladders separate and apart from each other. No such motivation can be found. The Myers patent discloses a specific feature of being able to fill all bladders from a single water source. The Myers patent states that "it is desirable to have a cover easily increased in weight such that the position on the mound is maintained" col. 1, lines 23 -25. The feature of simultaneously filling all bladders satisfies that purpose of the invention of being easily increased in weight. To have to fill each bladder individually would take a significant amount of time. Thus, the Applicant respectfully submits that there is no motivation to make the bladders separate and apart from each other.

For all of the above reasons, it is urged that rejection based on 35 U.S.C. §103(a) is no longer appropriate and should be withdrawn.

(C.) Claims 23 and 33

Claims 23 and 33 stand rejected as obvious over Myers. All of the arguments set forth under section (B.) above are repeated and incorporated herein. In addition, the Application respectfully submits that Myers lacks motivation in forming the bladders and the cover from the same material. There is no suggestion, teaching or need in Myers to form the bladders and the cover from the same material. The function of each is different, and the bladders are directed to withstanding more weight than a cover. Thus, Myers lacks motivation to form the bladders and the cover out of the same material and it follows that the rejection under 35 U.S.C. §103(a) should be withdrawn

(D.) Claims 26 through 30, and 36 through 40

Claims 26 through 30 and 36 through 40 stand rejected as obvious over Myers. All of the arguments set forth under section (B.) above are repeated and incorporated herein. Additionally, the limitations set forth in claims 26 through 30 and 36 through 40 are not taught or in any way suggested by the Myers patent. And finally, the specific choices of anchor locations in the present invention claims have a specific purpose.

The limitations set forth in claims 26 through 30 and 36 through 40 are not taught or in any way suggested by the Myers patent. The Myers patent specifically calls for three types of bladders, which vary in length, i.e., a front bladder 22, a rear bladder 24

and intermediate bladders 20. The positioning and length of the bladders determine how the weight of the bladders when filled with water is concentrated around the base of a mound col.2, lines 64-67. The front bladder and the rear bladder are positioned on the front and the rear of the cover, respectively. The intermediate bladders include ends adjacent to the longitudinal edge of the canvas and are positioned perpendicular to a respective edge of the canvas. Thus, Myers specifically teaches that the purpose in why the bladders are arranged as such in the disclosure is to distribute the weight around the base of the mound. If there were a plurality of central tank bladders located at a central area, the weight would not be distributed as functionally described. Therefore, Myers teaches away from having a plurality of central tank component anchors located at a central area.

And finally, the specific choices of anchor locations in the present invention claims have a specific purpose. Myers does not teach or suggest other arrangements, as well, that would enable the use of rolls or cutting of large tarps into smaller units. While the Examiner correctly points out that location of anchors is an obvious matter of choice, the specific choices of anchor locations in the present invention claims are not arbitrary. For example, the central tank compartment arrangement of claims 26 and 35 have a specific purpose being making multiple tarps from a single roll. For all of these reasons, it is urged that rejection based on 35 U.S.C. 103(a) is no longer appropriate and should be withdrawn.

CONCLUSION

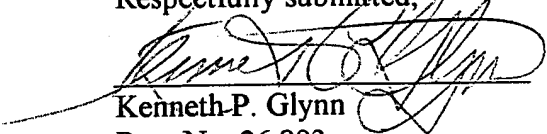
The Applicant believes that it should be clear to the Board of Appeals that the currently pending Claims 21 through 40 are allowable because Myers does render obvious the present invention. The rejections under 35 U.S.C. §103(a) should be reversed. The appealed claims are attached hereto as Exhibit A, while Figure 5 is attached hereto as Exhibit B.

Thank you.

Dated:

Aug 8, 2003

Respectfully submitted,



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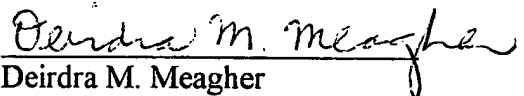
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EM RRR ER 246009783 US

cc: Peter N. Glynos

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KPG/dmm
EM RRR ER 246009783 US
cc: Peter N. Glynos
Attorney Docket No. PNG-101A
Serial No. 10/ 057, 208

EXHIBIT A
The Appealed Claims

21. A protective tarp for covering a mass, which comprises:
a flat, flexible sheet material having a top and a bottom and having
a peripheral edge; a plurality of tank compartment anchors
separate and apart from one another and said peripheral edge, each
of said plurality of tank component anchors having at least one fill
orifice and having closure means for said at least one fill orifice.
22. The protective tarp of claim 21 wherein said plurality of tank
compartment anchors are hollow, flexible tank compartment
anchors.
23. The protective tarp of claim 22 wherein said tank compartment
anchors and said sheet material are formed of the same
material.

24. The protective tarp of claim 21 wherein said sheet material is rectangular from a top view and has four edges, said edges being two sets of two opposite edges.

25. The protective tarp of claim 24 wherein there are at least two edges opposite one another which contain a plurality of tank compartment anchors.

26. The protective tarp of claim 21 wherein said protective tarp is a continuous tarp of substantial predetermined length having a central area away from said edges, and having a plurality of central tank compartment anchors located at said central area.

27. The protective tarp of claim 26 wherein said central tank compartment anchors are aligned in a row at a right angle to an edge.

28. The protective tarp of claim 27 wherein there are a plurality of groups of central tank compartment anchors, each group being located at said central area at disparate sections of said central area.

29. The protective tarp of claim 28 wherein each group of said plurality of permanently attached to groups of central tank compartment anchors are located equidistant said flat flexible sheet material from one another.

30. The protective tarp of claim 28 wherein at least a portion of said central tank compartment anchors are arranged in pairs so that said tarp may be cut between said pairs to create multiple tarps with tank compartment anchors along edges thereof.

31. The protective tarp for covering as mass, which comprises:
a flat, flexible waterproof sheet material having a top and a bottom and having a plurality of edges;
along each of the at least two said plurality of edges,

a plurality of tank compartment anchors separate and apart from one another, each having at least one fill orifice and having closure means for said at least one fill orifice.

32. The protective tarp of claim 31 wherein said plurality of tank compartment anchors are hollow, flexible tank compartment anchors.

33. The protective tarp of claim 32 wherein said tank compartment anchors and said sheet material are formed of the same material.

34. The protective tarp of claim 31 wherein said sheet material is rectangular from top view and has four edges, said four edges being two sets of two opposite edges.

35. The protective tarp of claim 34 wherein there are at least two edges opposite one another which contain a plurality of tank compartment anchors.

36. The protective tarp of claim 31 wherein said protective tarp is a continuous tarp of substantial predetermined length having a central area away from said edges, and having a plurality of central tank compartment anchors located at said central area.

37. The protective tarp of claim 36 wherein said central tank compartment anchors are aligned in a row at a right angle to an edge.

38. The protective tarp of claim 37 wherein there are plurality of groups of central tank compartment anchors, each group being located at said central area at disparate sections of said central area.

39. The protective tarp of claim 38 wherein each group of said plurality of groups of central tank compartment anchors are located equidistant from one another.

40. The protective tarp of claim 38 wherein at least portion of said central tank compartment anchors are arranged in pairs so that said tarp may be cut between said pairs to create multiple tarps with tank compartment anchors along all edges thereof.

EXHIBIT B

